

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

GREG ABBOTT, ET AL.,

*Defendants.*

CIVIL ACTION NO. 1:23-CV-00853-DAE

**DEFENDANTS' PRETRIAL FILINGS**

Pursuant to the Court's Scheduling Order, ECF 97, the parties agreed to submit separate Final Pretrial Filings. Defendants Greg Abbott, in his official capacity as Governor of the State of Texas, and the State of Texas hereby submit the Pre-Trial Filings due on this date. This includes a proposed final pre-trial order, exhibit and witness lists, deposition designations, and proposed fact stipulations.<sup>1</sup>

Because the Court has determined that this will be a bench trial, Defendants have not filed motions in limine, but reserve the right to object at trial to any inadmissible evidence. *See Windsor VIII Condo. Owner's Ass'n v. Berkshire Hathaway Guard Ins. Co.*, 2023 U. S. Dis. LEXIS 72544, 2023 WL 3094068 (M. D. La. 2023) ("motions in limine are generally a waste of time and resources in a bench trial"); *Ugarte v. Mid-America Metal Roofing & Siding Installed*, 2021 U. S. Dist. LEXIS 249905 (S. D. Tex. 2021) (motions in limine disfavored); *Lyondell Chem. Co. v. Albemarle Corp.*, 2007 U. S. Dist. LEXIS 101638 (E. D. Tex. 2007).

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<sup>1</sup> Plaintiff chose to submit to the Court its portion of the pre-trial filings separately, so this submission includes only the Defendants' portion of the pre-trial filings and the Stipulations of Fact agreed to with Plaintiff.

Defendants estimate that the presentation of the Defendants' evidence in this case will require approximately 48 hours of trial time, exclusive of cross-examination of those witnesses by Plaintiff. Because of the great importance of this case to Texas and its ability to protect its citizens and communities, Defendants are prepared to present trial testimony from twelve expert witnesses, each of whom have prepared and filed expert reports (ECF 122.5-122.12). Defendants hope that the required trial time can be shortened by added fact stipulations and efficient handling of exhibits and depositions and will work cooperatively with Plaintiff and the Court to that end.

## **I. SUMMARY OF DEFENDANTS' CONTENTIONS**

Defendants Governor Greg Abbott and the State of Texas caused the placement of the Floating Buoy Barrier in the Rio Grande River in July 2023. The Floating Buoy Barrier is part of their defense of Texas and its citizens and communities against an unprecedented invasion of Texas by transnational criminal cartels and potential terrorists. These cartels are engaged in human trafficking, illegal immigration, manufacture and smuggling of deadly illegal drugs, and assistance to potential terrorists entering the United States across the Rio Grande River.

The sole claim alleged at trial against Defendants in this action is under the Rivers and Harbors Appropriation Act of 1899, 33 U.S.C. § 403, 406 (the "RHA"). But the RHA does not apply here because Plaintiff cannot carry its burden to prove that the Floating Buoy Barrier is not in a "navigable water of the United States". The Rio Grande River is not navigable within the meaning of the RHA at the location of the Floating Buoy Barrier, about two miles downstream from the Camino Real International Bridge in Maverick County, Texas.

The Rio Grande River at that location is not presently used or susceptible of use in its natural condition as a highway of commerce for trade and travel in the customary modes of trade and travel on water in interstate or foreign commerce. The U. S. Army Corps of Engineers found in 1975 that there was no then-current use of the Rio Grande River in the entire 334.5-mile stretch between River Miles 275.5 and 610.0 that qualified as navigation under the RHA. The use of the River in that stretch is not materially different today in terms of use for lawful interstate or foreign commerce.

There is no substantial lawful commercial trade presently conducted along the Rio Grande

River in that 334.5-mile stretch that encompasses the location of the Floating Buoy Barrier. Moreover, there was never any “practical navigation” along the same stretch of the Rio Grande River historically, as the Corps of Engineers and other United States agencies acknowledged. Sporadic and exceptional military expeditions in the 1840s and 1850s were insufficient to establish historical navigability under the RHA. Although ferries sporadically crossed the River from bank to bank between Eagle Pass, Texas, and Piedras Negras, Mexico over a century ago, that was insufficient to establish navigability under the RHA, especially since there has never been any cross-river bank to bank traffic at the location of the Floating Buoy Barrier.

Plaintiff cannot show that there could be “reasonable improvements” that would make the Rio Grande River navigable in the stretch where the Floating Buoy Barrier is located. Improvements are only “reasonable” if their benefits can equal or exceed their costs at a time when such improvements could be completed. Plaintiff has not presented any scheme of improvements that could meet this standard, and indeed has not identified or quantified any benefits that such improvements likely would create, or when they could be realized. Indeed, the costs to make this stretch of the Rio Grande River would dwarf any likely benefits by a wide margin. Additionally, the waters of the Rio Grande River are already subject to a complex web of State, federal and international regulation. Under this established legal framework, improvements that entail appropriating new water or that modify the channel would be unlawful as well as impractical.

The Floating Buoy Barrier is not a “boom” prohibited by the RHA, as both the Coast Guard and the Corps of Engineers acknowledged. Nor can it be shoehorned into the phrase “or other structure”, since it is not similar to the other items specifically prohibited by the RHA. In more than a year in the Rio Grande River, the Floating Buoy Barrier has obstructed no one, harmed no one, and damaged no vessels. It does not violate the RHA.

The RHA does not even apply to States like Defendants, but only to “persons” and corporations”. Moreover, because Defendants placed the Floating Buoy Barrier in the Rio Grande River as part of the constitutionally protected right of Texas, invoked in good faith by Defendants, to defend Texas against invasion. Because that defense presents a non-justiciable political question,

it must be accepted as a complete defense to Plaintiff's claim under a regulatory statute like the RHA. In the alternative, Defendants are prepared to prove that defense at trial.

Plaintiff also fails to meet the requirements for the injunctive relief it seeks under long-settled law. Plaintiff cannot establish that the Floating Buoy Barrier inflicts substantial and irreparable harm on Plaintiff as to the interests in interstate and foreign commerce the RHA exists to further. The non-existent harm to commercial navigation caused by the Floating Buoy Barrier is far outweighed by the detriment to Texas, its citizens and communities, and the nation that would be caused by an injunction to remove the Floating Buoy Barrier. The relief Plaintiff seeks plainly disserves, rather than furthers, the public interest.

Even if it were to prevail, Plaintiff could be entitled only to the specific removal remedy that Section 10 of RHA provides, and not to broader injunctive relief it seeks.

## **II. DEFENDANTS' WITNESS LIST**

Defendants currently anticipate that they **will call** the following witnesses (in alphabetical order) at trial:

1. Dr. Kathy Alexander
2. Michael Banks
3. Thomas J. Ciarametaro
4. Victor Escalon
5. Loren Flossman
6. Ramon Gonzalez
7. Cassandra Hart
8. Dr. Eleftherios Iakovou
9. Dr. Heather Miller
10. Christine Magers
11. Chris Nordloh
12. Carlos Rubinstein
13. Rodney Scott

14. Herman Settemeyer
15. Dr. Douglas F. Shields
16. Walker Smith
17. Ancil Taylor
18. Ben Valdez
19. Tong Zhao

The foregoing witnesses may be presented as witnesses at trial through Declarations and/or testimony received on the motion for preliminary injunction in this case (see Fed. R. Civ. P 65(a)(2); through deposition testimony in this case; and/or through live testimony at trial.

Defendants currently anticipate that they **may call** in addition any of the following witnesses (in alphabetical order) at trial:

1. Georgina “Gina” Bermea
2. Isela Canava (adverse witness)
3. Michael Cintron (adverse witness)
4. Micky Donaldson (adverse witness)
5. Margaret Gaffney-Smith (adverse witness)
6. Mario Gomez (adverse witness)
7. Geir Kalhagen
8. Kevin Kiefer (adverse witness)
9. Neil Lebsock (adverse witness)
10. Justin Peters (adverse witness)
11. Joseph Shelnutt (adverse witness)
12. Hilary Quam (adverse witness)
13. Any witnesses designated as expert witnesses or expert rebuttal witnesses by Plaintiff  
(adverse witnesses)

The foregoing witnesses may be called as witnesses at trial through Declarations and/or

testimony received on the motion for preliminary injunction in this case (see Fed. R. Civ. P. 65(a)(2); through deposition testimony in this case; and/or through live testimony at trial.

Defendants reserve the right to call such rebuttal witnesses as they deem appropriate based on the testimony and other evidence admitted at trial; to change the order of witnesses set forth above; to call less than all of the witnesses set forth above; and to call witnesses not listed above because of circumstances not anticipated at this time.

### **III. DEFENDANTS' EXHIBIT LIST**

Defendants currently anticipate offering into evidence at trial the following Exhibits (not necessarily in the order listed):

1. "Biden-Harris Administration Designates Fentanyl Combined with Xylazine as an Emerging Threat to the United States" (Apr. 12, 2023)
2. "FACT SHEET: Biden-Harris Administration Announces Strengthened Approach to Crack Down on Illicit Fentanyl Supply Chains" (Apr. 11, 2023)
3. "Fact Sheet: White House Releases 2022 National Drug Control Strategy that Outlines Comprehensive Path Forward to Address Addiction and the Overdose Epidemic" (Apr. 21, 2022) \*
4. "Head of Navigation" (Ex. 7 to Dep. of Dr. B. Johnson)
5. "Rio Grande" by Leon C. Metz (Ex. 8 to Dep. of Dr. B. Johnson)
6. "San Antonio Crossing" (Ex. 4 to Dep. of Dr. B. Johnson)
7. "San Antonio Crossing" (Ex. 6 to Dep. of Dr. B. Johnson)
8. 2020-21 Port of Harlingen Annual Report
9. 2021-22 Port of Harlingen Annual Report
10. 2022-23 Port of Harlingen Annual Report
11. 33 C.F.R. 2.36. Navigable waters of the United States, navigable waters, and territorial waters. [govinfo.gov/content/pkg/CFR-2023-title33-vol1/xml/CFR-2023-title33-vol1-sec2-36.xml](https://www.govinfo.gov/content/pkg/CFR-2023-title33-vol1/xml/CFR-2023-title33-vol1-sec2-36.xml).
12. 33 C.F.R. 2.40. Maintenance of decisions. <https://www.govinfo.gov/content/pkg/CFR-2023-title33-vol1/xml/CFR-2023-title33-vol1-sec2-36.xml>.
13. 33 C.F.R. 322.2. Definitions. <https://www.govinfo.gov/content/pkg/CFR-2010-title33-vol3/pdf/CFR-2010-title33-vol3-sec322-2.pdf>.
14. 33 C.F.R. 326. Enforcement. <https://www.govinfo.gov/content/pkg/CFR-2011-title33-vol3/xml/CFR-2011-title33-vol3-part326.xml>.
15. 33 C.F.R. 329. Definition of Navigable Waters of the United States. <https://www.govinfo.gov/content/pkg/CFR-2012-title33-vol3/pdf/CFR-2012-title33-vol3-part328.pdf>

16. 33 C.F.R. 332.3(a). Activities requiring permits; General.  
<https://www.govinfo.gov/content/pkg/CFR-2023-title33-vol3/pdf/CFR-2023-title33-vol3-sec322-3.pdf>.
17. 33 U.S.C. §401. Construction of bridges, causeways, dams or dikes generally; exemptions. <https://www.govinfo.gov/content/pkg/USCODE-2022-title33/html/USCODE-2022-title33-chap9-subchapI-sec401.htm>.
18. 33 U.S.C. §403. Obstruction of navigable waters generally; wharves; piers, etc.; excavations and filling in. [govinfo.gov/content/pkg/USCODE-2022-title33/html/USCODE-2022-title33-chap9-subchapI-sec403.htm](https://www.govinfo.gov/content/pkg/USCODE-2022-title33/html/USCODE-2022-title33-chap9-subchapI-sec403.htm).
19. 33 U.S.C. §406. Penalty for wrongful construction of bridges, piers, etc.; removal of structures. <https://www.govinfo.gov/content/pkg/USCODE-2022-title33/html/USCODE-2022-title33-chap9-subchapI-sec406.htm>.
20. 33 U.S.C. §413. Duty of United States attorneys and other Federal officers in enforcement of provisions; arrest of offenders.  
<https://www.govinfo.gov/content/pkg/USCODE-2022-title33/html/USCODE-2022-title33-chap9-subchapI-sec413.htm>.
21. 85 Fed. Reg. 14953 et seq. (March 16, 2020) \*
22. ABC News (A. Garcia), “3-Year-Old Boy Dies After Being Swept Away While Crossing Rio Grande with His Family” (Sept. 21, 2023)
23. ABC News, “FBI Director Warns of ‘Dangerous Individuals’ Coming Across the Southern Border” (March 11, 2024)
24. ABC News, “FBI Director Warns of ‘Dangerous Individuals’ Coming Across the Southern Border” (March 11, 2024).
25. About the HIDTA Program: South Texas TIDTA Southwest Border (2024).
26. Amistad Dam Capacity Table
27. Amistad Dam Flood Operations and Safety Manual Produced by USIBWC on Jul. 15, 2024.
28. Amistad Dam Water Release Requests Protocol
29. Appendix 3, Table of River Mileages, (Ex. 5 to Dep. Of A. Cortez)
30. Article “Port Director Appointed to PAAC”
31. Article “Port Director to Serve as GPA President”
32. Article “Walker Smith, Port of Harlingen’s Port Director Appointed to TxDOT Port Authority Advisory Committee”
33. Article from El Paso Herald (Ex. 14 to Dep. of Dr. B. Johnson)
34. Binational Joint Survey (IBWC0006615).
35. Blankley, “Abbott: One Person Dies Every Day in Harris County Because of Fentanyl”, the centersquare.com (July 14, 2022)
36. Blankley, “Retired FBI Execs to Congress: Invasion at Border ‘Perilous’ for America”, centersquare.com (Jan. 26, 2024)
37. Blankley, “Retired FBI Execs to Congress: Invasion at Border ‘Perilous’ for America”, centersquare.com (Jan. 26, 2024)

38. Blankley, “Three More Texas Counties Declare Invasion, Bringing Total to 50”, thecentersquare.com (Jan. 6, 2024) Declaration of Victor Escalon<sup>2\*</sup>
39. Border Disaster Declarations by Governor Greg Abbott
- A. Letter from Gregory S. Davidson, Executive Clerk to the Governor of Texas, to the Secretary of State of Texas dated May 31, 2021, enclosing Proclamation of same date signed by Governor Greg Abbott
  - B. Letter from Gregory S. Davidson, Executive Clerk to the Governor of Texas, to the Secretary of State of Texas dated June 30, 2021, enclosing Proclamation of same date signed by Governor Greg Abbott
  - C. Letter from Gregory S. Davidson, Executive Clerk to the Governor of Texas, to the Secretary of State of Texas dated July 30, 2021, enclosing Proclamation of same date signed by Governor Greg Abbott
  - D. Letter from Gregory S. Davidson, Executive Clerk to the Governor of Texas, to the Secretary of State of Texas dated August 29, 2021, enclosing Proclamation of same date signed by Governor Greg Abbott
  - E. Letter from Gregory S. Davidson, Executive Clerk to the Governor of Texas, to the Secretary of State of Texas dated Oct. 28, 2021, enclosing Proclamation of same date signed by Governor Greg Abbott
  - F. Letter from Gregory S. Davidson, Executive Clerk to the Governor of Texas, to the Secretary of State of Texas dated Nov. 27, 2021, enclosing Proclamation of same date signed by Governor Greg Abbott
  - G. Letter from Gregory S. Davidson, Executive Clerk to the Governor of Texas, to the Secretary of State of Texas dated Dec. 23, 2021, enclosing Proclamation of same date signed by Governor Greg Abbott
  - H. Letter from Gregory S. Davidson, Executive Clerk to the Governor of Texas, to the Secretary of State of Texas dated Jan. 22, 2022, enclosing Proclamation of same date signed by Governor Greg Abbott
  - I. Letter from Gregory S. Davidson, Executive Clerk to the Governor of Texas, to the Secretary of State of Texas dated Feb. 21, 2022, enclosing Proclamation of same date signed by Governor Greg Abbott
  - J. Letter from Gregory S. Davidson, Executive Clerk to the Governor of Texas, to the Secretary of State of Texas dated March 23, 2022, enclosing Proclamation of same date signed by Governor Greg Abbott
  - K. Letter from Gregory S. Davidson, Executive Clerk to the Governor of Texas, to the Secretary of State of Texas dated Apr. 22, 2022, enclosing Proclamation of same date signed by Governor Greg Abbott
  - L. Letter from Gregory S. Davidson, Executive Clerk to the Governor of Texas, to the Secretary of State of Texas dated May 22, 2022, enclosing Proclamation of same date signed by Governor Greg Abbott

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\* Exhibit admitted into evidence at Preliminary Injunction Hearing.



- M. Letter from Gregory S. Davidson, Executive Clerk to the Governor of Texas, to the Secretary of State of Texas dated June 21, 2022, enclosing Proclamation of same date signed by Governor Greg Abbott
- N. Letter from Gregory S. Davidson, Executive Clerk to the Governor of Texas, to the Secretary of State of Texas dated July 21, 2022, enclosing Proclamation of same date signed by Governor Greg Abbott
- O. Letter from Gregory S. Davidson, Executive Clerk to the Governor of Texas, to the Secretary of State of Texas dated August 20, 2022, enclosing Proclamation of same date signed by Governor Greg Abbott
- P. Letter from Gregory S. Davidson, Executive Clerk to the Governor of Texas, to the Secretary of State of Texas dated Sept. 19, 2022, enclosing Proclamation of same date signed by Governor Greg Abbott
- Q. Letter from Gregory S. Davidson, Executive Clerk to the Governor of Texas, to the Secretary of State of Texas dated Oct. 19, 2022, enclosing Proclamation of same date signed by Governor Greg Abbott
- R. Letter from Gregory S. Davidson, Executive Clerk to the Governor of Texas, to the Secretary of State of Texas dated Nov. 18, 2022, enclosing Proclamation of same date signed by Governor Greg Abbott
- S. Letter from Gregory S. Davidson, Executive Clerk to the Governor of Texas, to the Secretary of State of Texas dated Dec. 16, 2022, enclosing Proclamation of same date signed by Governor Greg Abbott
- T. Letter from Gregory S. Davidson, Executive Clerk to the Governor of Texas, to the Secretary of State of Texas dated Jan. 20, 2023, enclosing Proclamation of same date signed by Governor Greg Abbott
- U. Letter from Gregory S. Davidson, Executive Clerk to the Governor of Texas, to the Secretary of State of Texas dated Feb. 20, 2023, enclosing Proclamation of same date signed by Governor Greg Abbott
- V. Letter from Gregory S. Davidson, Executive Clerk to the Governor of Texas, to the Secretary of State of Texas dated March 22, 2023, enclosing Proclamation of same date signed by Governor Greg Abbott
- W. Letter from Gregory S. Davidson, Executive Clerk to the Governor of Texas, to the Secretary of State of Texas dated Apr. 21, 2023, enclosing Proclamation of same date signed by Governor Greg Abbott
- X. Letter from Gregory S. Davidson, Executive Clerk to the Governor of Texas, to the Secretary of State of Texas dated May 12, 2023, enclosing Proclamation of same date signed by Governor Greg Abbott
- Y. Letter from Gregory S. Davidson, Executive Clerk to the Governor of Texas, to the Secretary of State of Texas dated June 11, 2023, enclosing Proclamation of same date signed by Governor Greg Abbott

- Z. Letter from Gregory S. Davidson, Executive Clerk to the Governor of Texas, to the Secretary of State of Texas dated June 29, 2023, enclosing Proclamation of same date signed by Governor Greg Abbott
- 40. CBP Email to EGT Supervisors Jan. 24, 2024, On woman crossing the river who was stopped from crossing by buoys (CBP0000132).
- 41. CBS News, “At Least 853 Migrants Died Crossing the U. S. – Mexico Border in Past 12 Months – A Record High” (Oct. 28, 2022) \*
- 42. City of Eagle Pass, TX Future Land Use Map
- 43. Civil Works 101 - Becky Moyer, Chief, Planning & Policy Southwestern Division (Aug. 27, 2015)
- 44. Close up Google Earth of the Buoys (USACE0008019).
- 45. CNN (R. Flores & R. Nieves), A Texas Sheriff Says He Finds the Bodies of Migrants Almost Every Day. 2022 Could Be the Deadliest Year Yet for Migrants Crossing the US Border (Aug. 24, 2022).
- 46. CNN Politics, “First on CNN: A Record Number of Migrants Have Died Crossing the US – Mexico Border” (Sep. 7, 2022) \*
- 47. Congressional Research Service - Process for U.S. Army Corps of Engineers (USACE) Projects (Mar. 7, 2024).
- 48. Convention of 1889 – Convention between the United States and Mexico
- 49. Daily Caller (<https://dailycaller.com>, “Exclusive: Biden Admin Watered Down Vetting Process for Chinese Illegal Immigrants, Email Shows” (Jan. 2, 2024)
- 50. Daily Wire, “‘The Country Has Been Invaded’: Former FBI Officials Issue Grave Warning on Biden’s Open Border” (Jan. 26, 2024)
- 51. Daily Wire, “‘The Country Has Been Invaded’: Former FBI Officials Issue Grave Warning on Biden’s Open Border” (Jan. 26, 2024)
- 52. DEA Website “Fentanyl Awareness” \*
- 53. Declaration of Ben Valdez \*
- 54. Declaration of Chris Nordloh\*
- 55. Declaration of Loren Flossman\*
- 56. Declaration of Ramon Gonzalez \*
- 57. Declaration of Victor Escalon\*
- 58. Dr. F. Douglas Shields, Jr., Testimony History. (Served Jun. 28, 2024).
- 59. Drug Enforcement Administration, “National Drug Threat Assessment 2024” (May 2024)
- 60. Eagle Pass City Council Minutes, including Emergency Resolution
- 61. Eagle Pass/Piedras Negras Daily Flow Charts
- 62. Excerpt from “River of Lost Dreams” by P. Kelley (Ex. 10 to Dep. of Dr. B. Johnson)
- 63. Excerpt from “Great River” by P. Horgan (Ex. 15 to Dep. of Dr. B. Johnson)
- 64. Excerpt from “Upper Rio Grande” by B. P. Tilden (Ex. 9 to Dep. of Dr. B. Johnson)
- 65. Excerpt from Port of Harlingen Website

66. Excerpt from Sul Ross State Teachers College Bulletin 48 (Ex. 16 to Dep. of Dr. B. Johnson)
67. Executive Order 14059 by President Joseph R. Biden (Dec. 17, 2021) \*
68. Executive Order 14059, 86 FR 71549 (“Imposing Sanctions on Foreign Person Involved in the Global Illicit Drug Trade” (Dec. 17, 2021)
69. Executive Order by Gov. Greg Abbott (July 7, 2022) \*
70. Executive Order by Gov. Greg Abbott (May 31, 2021) \*
71. Executive Order by Gov. Greg Abbott (Sept. 21, 2022) \*
72. Expert Witness Report, Dr. Tong Zhao. (Served Jun. 14, 2024).
73. Expert Witness Report, Dr. F. Douglas Shields, Jr., Reasonableness of proposed improvement of the Rio Grande for navigation downstream of Amistad Dam. (Served Jun. 14, 2024).
74. Expert Witness Report, Dr. Heather Miller. (Served Jun. 14, 2024).
75. Expert Witness Report, Dr. Kathy Alexander
76. Expert Witness Report, Mr. Ancil Taylor, First Supplemental Report. (Served on Jul. 1, 2024).
77. Expert Witness Report, Mr. Ancil Taylor. (Served Jun. 14, 2024).
78. Expert Witness Report, Mr. Carlos Rubinstein & Mr. Herman R. Settemeyer, P.E., Expert Report on Water and Water Right Impacts Along the Rio Grande in Texas - Particularly as it Relates to Navigation as a Beneficial Use of Water. (Served Jun. 14, 2024).
79. Expert Witness Report, Mr. Thomas P. Ciarametaro. (Served Jun. 14, 2024).
80. Expert Witness Report, Ms. Christine Magers and Ms. Cassandra Hart, Environmental Resources & Impacts Review, First Supplemental Report. (Served Jun. 27, 2024).
81. Expert Witness Report, Ms. Christine Magers and Ms. Cassandra Hart, Environmental Resources & Impacts Review. (Served Jun. 14, 2024).
82. Expert Witness Report, Prof. Eleftherios Iakovou, Ph.D. (Served Jun. 14, 2024).
83. FEMA Eagle Pass Special Flood Hazard Area Map
84. Fox News (L. Richard), “Texas DPS Recovered Four Bodies, Including Infant, From Rio Grande in Eagle Pass in 48 Hours: Spokesman” (July 4, 2023)
85. Fox News “UN Migration Study Deems US – Mexico Border ‘Deadliest’ Land Route in the World (July 4, 2022) \*
86. Fox News, “Senate Republicans Cite ‘Sound of Freedom’ to Demand Hearings on Human Trafficking, Biden Border Policies” (July 29, 2023)
87. Fox News, “US Customs Confirms 4th Iranian ‘Special Interest Alien’ Apprehended This Month in Eagle Pass, Texas Oct. 15, 2023)
88. Handbook of Texas Online Entry (“Rio Grande”) by Tex. State Hist. Ass’n and Metz \*
89. Handwritten Letter from D. Kingsbury to Maj. Chapman (Ex. 11 to Dep. of Dr. B. Johnson)

90. Hearing transcript of hearing on The Biden Border Crisis: Part III before the Subcommittee on Immigration Integrity, Security and Enforcement, Committee on the Judiciary, U.S. House of Representatives, One Hundred Eighteenth Congress, First Session, Tuesday, May 23, 2023.
91. Homeland Security Comm., U. S. House of Rep., “Factsheet: Encounters of Chinese National Surpass All Fiscal Year 2023 at the Southwest Border” (Apr. 18, 2024)
92. Homeland Security Comm., U. S. House of Rep., “Factsheet: Final FY23 Numbers Show Worst Year at America’s Borders – Ever” (Oct. 26, 2023)
93. Homeland Security Comm., U. S. House of Rep., “FBI Director Wray Confirms the Border Crisis Poses Major Homeland Security Threat, DHS Secretary Mayorkas Stonewalls” (Nov. 15, 2023)
94. Homeland Security Comm., U. S. House of Rep., “Now Nobody Crosses Without Paying”: Senior Border Patrol Agents Describe Unprecedented Cartel Control at Southwest Border” (Dec. 14, 2023)
95. House Resolution 863, 118th Cong., 2d Session (Apr. 16, 2024)
96. IBWC Emails (Beg. Bates IBWC0004406).
97. IBWC List of Structures, Produced by the USIBWC on Jul. 15, 2024.
98. IBWC Rio Grande Allotment, Current Cycle (Oct. 25, 2020, thru June 1, 2024).
99. ICE Press Release (Dec. 30, 2022). \*
100. Joint Agency Guide - SMART Planning & USACE Feasibility Studies - Guide to Coordination and Engagement with the Services (Sep. 2016).
101. KSAT News (R. Salinas & D. Ibarra), “Child, Man Drowned Within Two Days While Crossing Rio Grande” (Sept. 22, 2023)
102. Letter from Comm. On Transp. & Infrastructure, U. S. House of Rep., to M. Connor and S. Spellmon (Oct. 19, 2023)
103. Letter from D. Kingsbury to Maj. Chapman dated May 18, 1849 (Ex. 12 to Dep. of Dr. B. Johnson)
104. Letter from Gov. Greg Abbott to Col. Steven C. McGraw and others (Nov. 16, 2022) \*
105. Letter from Governor Greg Abbott to President Joseph R. Biden, Jr. dated Jan. 8, 2023
106. Letter from Governor Greg Abbott to President Joseph R. Biden, Jr. dated July 24, 2023
107. Letter from Governor Greg Abbott to President Joseph R. Biden, Jr. dated Nov. 16, 2022
108. Letter to Speaker of the U. S. House of Representatives and other Congressional Leaders from Kevin R. Block and other former FBI and Counterintelligence Officials dated January 17, 2024 (“The United States is Facing a New and Imminent Danger”)
109. Letter to Speaker of the U. S. House of Representatives and other Congressional Leaders from Kevin R. Block and other former FBI and Counterintelligence Officials dated January 17, 2024 (“The United States is Facing a New and Imminent Danger”)

110. Levels at Amistad Reservoir
111. Map (Ex. 13 to Dep. of Dr. B. Johnson)
112. Map of Eagle Pass and Surrounding Area (Ex. 20 to Dep. of Dr. B. Johnson)
113. Map of Eagle Pass, Texas 1887 (Ex. 18 to Dep. of Dr. B. Johnson)
114. Map of Texas (Rio Grande River) \*
115. Marinetransit.com Navigational Heatmap
116. Marinetransit.com Statement on Data Collection
117. Media Coverage of June 8, 2023, Press Conference \*
118. Melanie Casner Feb. 16, 2024, Email to Timothy MacAllister regarding watercraft and operations in the Rio Grande (US0002301).
119. Memorandum Dated May 3, 2022, from Inspector General of U. S. Dept. of Homeland Security to Troy A. Miller, et al.\*
120. Micky D Donaldson Aug. 3, 2023, Email on Deceased Male whose body floated downriver to the buoys (CBP0000341).
121. Micky D Donaldson Jul. 11, 2023, Email to DRT OPS Div Subject: DPS Buoy Deployment Update (CBP0000319).
122. Micky D. Donaldson Aug. 29, 2023, Email on CBP performing zero rescues in location of Buoys and C-Wire (Beg. Bates CBP0000761).
123. Missing Migrants Project “Annual Regional Overview – Executive Summary” \*
124. Monthly Return of Public Animals (Ex. 17 to Dep. of Dr. B. Johnson)
125. MOU between USACE and the FERC on Non-Federal Hydropower Projects (Jul. 21, 2016).
126. Natelson and Hyman, “The Constitution, Invasion, Immigration, and the War Powers of States”, Vo. 13, Issue 1, British Journal of American Legal Studies (2024)
127. National Academies Press, Funding and Managing the U.S. Inland Waterways System: What Policy Makers Need to Know: What Policy Makers Need to Know (2015).
128. National Review, “Illegal Border Crossings Surged in July Despite Record Temperatures” (July 27, 2023) \*
129. National Waterway Network List of Navigable Waterways
130. Navigational Heatmap NOAA
131. New York Times (D. Montgomery & M. Jordan), “Nine Migrants Drown as Dozens Are Swept Down Rio Grande” (Sept. 2, 2022)
132. New York Times (M. Jordan), “9-Year-Old Migrant Girl Dies Trying to Cross Rio Grande into U. S.” (Mar. 26, 2021)
133. New York Times, “Growing Numbers of Chinese Migrants Are Crossing the Southern Border” (Nov. 24, 2023)
134. New York Times, “The Southern Border, Terrorism Fears and the Arrests of 8 Tajik Men” (June 25, 2024)
135. Photograph Migrants walking near buoys AFP via Getty Images
136. Photograph of Rio Grande River (Ex. 4 to Dep. Of Margaret Gaffney-Smith.

137. Photograph of Rio Grande River (Ex. 7 to Dep. Of Margaret Gaffney-Smith.
138. Photographs of Buoys on the Rio Grande River\*
139. Photographs of the Buoys on the Rio Grande River
140. Photographs of the Rio Grande River between River Mile Markers 275.5 and 610.
141. Port of Harlingen Master Plan
142. PowerPoint Presentation - Operation Lonestar - Michael Banks, Office of the Governor, Texas Border Czar, Special Advisory to the Governor on Border Matters (May 15, 2024).
143. President's Message to Congress on Continuation of National Emergency with Respect to Global Illicit Drug Trade (Dec. 12, 2022) \*
144. Report to Congress of American Section of Int'l Water Comm. (Ex. 8 to Dep. of Dr. B. Johnson)
145. Republican Governors Ass'n, "Republican Governors Band Together, Issue Joint Statement Supporting Texas' Constitutional Right to Self-Defense" (Jan. 25, 2024)
146. Resume of Michael W. Banks
147. Statement of Brent Webster, First Assistant Attorney General of Texas, to the U. S. House of Representatives Judiciary Subcommittee on the Constitution and Limited Government and Ex. 1-6 (Jan. 30, 2024).
148. Statement of Governor Greg Abbott (Jan. 24, 2024)
149. Statement of Mark Brnovich, former Attorney General of Arizona, to the U. S. House of Representatives Judiciary Subcommittee on the Constitution and Limited Government (Jan. 30, 2024).
150. Summary of Press Statement (IBWC0007302).
151. Tables 1-5 excerpted from Doug Shields' Expert Report
152. Testimony summary of Rodney Scott September 14, 2023, at hearing on Terrorist Entry Through the Southwest Border before the Subcommittee on Immigration Integrity, Security, and Enforcement, Committee on the Judiciary, U.S. House of Representatives, One Hundred Eighteenth Congress, Thursday, September 14, 2023.
153. Texas DPS Drone Video of Rio Grande near Location of Floating Buoy Barrier (Aug. 17, 2023) \*
154. Texas Monthly (A. Nelsen), "What Happens to the Migrants Who Don't Make It?" (Apr. 2024)
155. Texas Public Radio (J. Aguilar), "More than 5 Texans Die Every Die from Fentanyl. A New Online Dashboard is Tracking These Deaths" (July 15, 2023)
156. Texas Tribune (J. L. Carver), "Infant Girl Among Four Found Dead in Rio Grande" (July 4, 2023)
157. Texas Tribune (U. Garcia), "In a Border Graveyard, Volunteers Exhume Migrants' Bodies and Search for Their Families" (Jan. 24, 2023)
158. Texas Tribune (W. Melhado), "Authorities Report Nine Drowning Victims After Deadly Rio Grande Crossing" (Sept. 3, 2022)
159. Texas Water Development Plan



160. Transcript of Preliminary Injunction Hearing (Aug. 22, 2023).
161. Treaty of 1970 – Treaty to Resolve Pending Boundary Differences and Maintain the Rio Grande and Colorado River as the International Boundary
162. U S Customs and Border Protection Apprehensions (2020 to 2023 YTD through June) \*
163. U S Customs and Border Protection Apprehensions (2020 to 2023 YTD) \*
164. U S Customs and Border Protection, “Border Rescues and Mortality Data” (July 24, 2023) \*
165. U S News (D. Lewak), “Huge Rise in Border Deaths from Drowning, Dehydration Overwhelm Texas Border Town’s Morgues” (Aug. 27, 2022)
166. U. S Customs and Border Protection, “Border Patrol Warns Immigrants of Life-Threatening Risks of Crossing the Rio Grande River” (May 17, 2019) \*
167. U. S. Customs and Border Protection “CPB Releases June 2023 Monthly Update (July 18, 2023) \*
168. U. S. Customs and Border Protection Apprehensions (2020 to 2023) \*
169. U. S. Customs and Border Protection Drug Seizures (2020to 2023) \*
170. U. S. Customs and Border Protection, Patrolling the Rio Grande (Nov. 24, 2023).
171. U. S. News (E. A. J. Connelly), Disturbing Video Captures Migrants Drowning in Rio Grande” (Mar. 20, 2021)
172. U.S. Army Corps of Engineers SMART Planning Feasibility Studies - A Guide to Coordination and Engagement with the Services (Sep. 2015).
173. US Inland Waterways Map (Ex. 5 to Dep. Of Margaret Gaffney-Smith.
174. US Waterway Vessel Density 2016-2023
175. US Waterway Vessel Density 2016-2023 Descriptions
176. USACE National Waterways Study - A Framework for Decision Making - Final Report NWS-83-1, (Jan. 1983).
177. 1975 USACE Navigability Study and Navigability Letter (Beg. Bates USACE0001132).
178. USACE Texas Waterway Profile
179. USACE Texas Waterway Traffic Report
180. USCBP Jun. 14, 2023, Briefing on potential deployment of floating barrier system. (CBP0000089).
181. USCG Navigability Determination, Rio Grande River, TX (Oct. 19, 1984)
182. USIBWC Emails sent 2/11/24 and 2/12/24 (Beg. Bates IBWC0020469).
183. Video of the Rio Grande River in the vicinity of Eagle Pass (DPS).
184. Video of the segment of the Rio Grande River between River Mile Markers 275.5 and 610 (DPS).
185. Video taken Sep. 20, 2023, in the vicinity of the buoys.
186. Water Treaty of 1944 – Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande Treaty between the United States and Mexico

187. World Radio Article - Enforcing the law at the border - Immigration is taking its toll on the border patrol agents in South Texas, hosted by Bonnie Pritchett (Nov. 17, 2022).

#### **IV. DEFENDANTS' DEPOSITION DESIGNATIONS**

**"Please find the deposition designations for the following witnesses attached as Exhibit A:**

1. Walker Smith
2. United States Section of IBWC 30(b)(6) designee Isela Canava
3. City of Eagle Pass, Texas 30(b)(6) designee Ivan Morua
4. Francisco Sainz
5. Mario Gomez
6. Neal Lebsack
7. Joseph Shelnut
8. United States Coast Guard 30(b)(6) designee Retired Captain Kevin Kiefer
9. United States Coast Guard 30(b)(6) designee Captain Michael Cintron
10. United States Border Patrol 30(b)(6) designee Micky Donaldson
11. United States Army Corps of Engineers 30(b)(6) designee Margaret Gaffney-Smith

#### **V. MOTIONS TO EXCLUDE OR IN LIMINE**

Given the Court's desire to conduct a bench trial, Defendants decline to file any motions in limine, as such motions are a waste of time and disfavored. E.g., *Ugarte v. Mid-America Metal Roofing & Siding Installed*, 2021 U. S. Dist. LEXIS 249905 (S. D. Tex. 2021); *Lyondell Chem. Co. v. Albemarle Corp.*, 2007 U. S. Dist. LEXIS 101638 (E. D. Tex. 2007).

Defendants' Motions to Exclude were presented and ruled on by Magistrate Judge Howell on July 25, 2024.

#### **VI. PROPOSED STIPULATIONS OF FACT**

Plaintiff and Defendants jointly propose the following Stipulations of Fact:



1. Defendants caused the Floating Buoy Barrier to be placed in the Rio Grande River about two miles downstream from the Camino Real International Bridge in Maverick County, Texas, in July 2023.
2. Defendants did not seek or obtain a Section 10 Permit from the United States Army Corps of Engineers with respect to placement of the Floating Buoy Barrier in the Rio Grande River.
3. The Floating Buoy Barrier is, and has since at least August 31, 2023, been located entirely within the boundaries of the United States of America and the State of Texas.

Date: July 26, 2024

Respectfully submitted,

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**Counsel for Defendants**

**CERTIFICATE OF SERVICE**

On July 26, 2024, this document was served on all counsel of record via email.

s / David Bryant  
David Bryant  
Senior Special Counsel